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5 IN THE UNITED STATES DISTRICT COURT
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 MOHAMMED Z. KHAN,

No. C 19-8349 WHA (PR)

10 Petitioner,

**ORDER TO SHOW CAUSE;
DENYING LEAVE TO PROCEED IN
FORMA PAUPERIS**

11 v.

12 M. POLLARD,

(ECF No. 2)

13 Respondent.
14 _____/

15 **INTRODUCTION**

16 Petitioner, who appears to be on parole or probation, filed this pro se petition for a writ
17 of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state court conviction. For the
18 reasons discussed below, respondent is ordered to show cause why the petition should not be
19 granted. He has paid the filing fee, which means his application for leave to proceed in forma
20 pauperis is **DENIED**.

21 **STATEMENT**

22 Petitioner was convicted in Alameda County Superior Court in 2016 of first-degree
23 murder and attempted voluntary manslaughter. He was sentenced to a term of 32 years to life in
24 state prison. On appeal, the California Court of Appeal affirmed the judgment, and the
25 California Supreme Court denied review. Thereafter, petitioner filed the instant federal
26 petition.

27 **ANALYSIS**

28 **A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*
3 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
4 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
5 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
6 court must "specify all the grounds for relief which are available to the petitioner ... and shall
7 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of
8 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. "[N]otice' pleading is not
9 sufficient, for the petition is expected to state facts that point to a 'real possibility of
10 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
11 688, 689 (1st Cir. 1970)).

12 B. LEGAL CLAIMS

13 Petitioner claims that (1) there was insufficient evidence to support his conviction of
14 attempted involuntary manslaughter; (2) there was insufficient evidence to support his
15 conviction of first-degree murder; and (3) the trial court erred by issuing a jury instruction
16 under CALCRIM No. 540. These claims, when liberally construed, warrant a response.

17 CONCLUSION

18 1. The clerk shall mail a copy of this order and the petition with all attachments to the
19 respondent and the respondent's attorney, the Attorney General of the State of California. The
20 clerk shall also serve a copy of this order on the petitioner.

21 2. Respondent shall file with the court and serve on petitioner, within **sixty-three (63)**
22 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
24 granted based on the claim found cognizable herein. Respondent shall file with the answer and
25 serve on petitioner a copy of all portions of the state prison disciplinary proceedings that are
26 relevant to a determination of the issues presented by the petition.

27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
28 court and serving it on respondent within **twenty-eight days** of the date the answer is filed.

1 3. Respondent may file, within **sixty-three (63) days**, a motion to dismiss on procedural
2 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
3 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file
4 with the court and serve on respondent an opposition or statement of non-opposition within
5 **twenty-eight days** of the date the motion is filed, and respondent shall file with the court and
6 serve on petitioner a reply within **fourteen days** of the date any opposition is filed.

7 4. Petitioner is reminded that all communications with the court must be served on
8 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
9 keep the court informed of any change of address and must comply with the court's orders in a
10 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute

11 **IT IS SO ORDERED.**

12 Dated: January 23, 2020.

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15 WILLIAM ALSUP
16 UNITED STATES DISTRICT JUDGE
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